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Dept. 9
Probate Tentative Rulings

1. **WEBSTER v. WEBSTER** **22PR0309**

Review Hearing

A Petition to compel accounting was filed on November 29, 2022. Following hearing on January 30, 2023, the court issued an Order on 1/30/23 as follows:

1. Respondent to provide Petitioner with an itemized accounting of all expenditures and receipts from the effective date of the power of attorney through the date of the Order;
2. Respondent's authority under the power of attorney is revoked;
3. Adrian Webster is appointed attorney-in-fact pursuant to the succession provision in the durable power of attorney;
4. Respondent provide restitution to the principal as to be determined once an accounting is made and upon approval by the court.

Proof of service of notice of the Order was filed on February 2, 2023.

The 11/19/22 Petition seems to have been approved, or rendered moot, by the 1/30/23 Order.

Nothing new has been filed. Close the case?

TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. ESTATE OF WHEELER 22PR0216

Final Distribution/First and Final Account

Letters of Administration were issued on January 9, 2023. An Inventory and Appraisal was filed on February 8, 2023.

A verified Petition for Final Distribution/First and Final Account was filed on May 11, 2023. Proof of service of notice of the hearing was filed on June 9, 2023.

The entire estate consists of \$41,202.16 of cash assets in a Bank of American checking account. The proposed distribution is equal shares (25 percent) to each of four individuals, three of decedent's siblings and one nephew who is the child of decedent's predeceased sibling.

The Petition requests:

1. The administration of the estate be brought to a close;
2. All reported acts and proceedings of the Administrator be confirmed and approved;
3. The Administrator be authorized to retain \$150 in closing expenses and to pay liabilities, and to deliver the unused part to the beneficiaries of the estate without further court order after closing expenses have been paid;
4. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed made to the beneficiaries as set forth in the Petition.

TENTATIVE RULING #2: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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3. ESTATE OF COLOMBO 22PR0124

Status of Administration

Decedent died intestate on April 7, 2022, survived by his spouse and an adult daughter. Letters of Administration were issued to decedent's spouse on August 24, 2022. The Final Inventory and Appraisal was filed on December 7, 2022.

Was the 8/2/23 status report hrg advanced to this date?

Notice for this matter appears to be defective (wrong form). No Status Report was filed. Why hasn't a final petition been filed?

TENTATIVE RULING #3: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, IN DEPARTMENT NINE. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, JULY 29, 2024, IN DEPARTMENT NINE.

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4. ESTATE OF GUMINA PP20180192

- (1) Order to Show Cause – Removal of Administrator**
- (2) Petition for Letters of Administration**
- (3) Status of Administration**

Decedent John Steven Gumina died intestate on July 15, 2018. Letters of Administration were issued to Anthony Gumina on December 12, 2018. A Final Inventory and Appraisal was filed on July 21, 2021. At hearings on December 8, 2021, and June 15, 2022, the court noted that there was no Final Account and Request for Order of Final Distribution on file with the court, and the matter was continued.

At the December 14, 2022, hearing, the court noted that the Administrator had still not filed the Final Account and Request for Order of Final Distribution, and set an OSC hearing on March 13, 2023 to determine whether Anthony Gumina should be removed as administrator. The court notes that the estate administrator is in prison for the murder of his wife, Heather Gumina.

At the hearing on March 13, 2023, the matter was continued to May 1, 2023, and on May 1, 2023 it was further continued to July 3, 2023 to determine whether Anthony Gumina should be removed, and if so, who should be appointed.

There are currently two pending Petitions to serve as Administrator of this Estate:

1. Melody Russell, the sister of Heather Gumina. Notice of Melody' Russell's Petition and proof of service was filed on February 27, 2023. A Duties/Liabilities statement (DE 147) was filed on March 3, 2023, **but there is no DE-147s** form on file with the court, as required by Local Rules of El Dorado County Superior Court, Rule 10.02.10.

A new Proof of publication was filed on July 28, 2023. Is it a valid publication?

On June 23, 2023, Anthony Gumina filed a letter with the court objecting to Melody Russell's Petition.

2. Pamela Cordoba, a friend of decedent. A Duties/Liabilities statement (DE 147) was filed on May 10, 2023, and a DE-147s form was filed on July 3, 2023. Proof of publication was filed on June 26, 2023. There is no proof of service of Notice of the Petition on file with the court for Ms. Cordoba's Petition. Anthony Gumina'd 6/23/23 supports Pamela Cordoba's Petition.

On June 21, 2023, Melody Russell objected to the appointment of Pamela Cordoba, who holds a power of attorney executed by Anthony Gumina, and who Ms. Russell accuses of liquidating and wasting the estate while this matter is pending.

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And there could have been a third Petition, but Kimberly Harris did not file it. At the hearing of December 14, 2022, Ms. Harris was directed to file a Petition if she wished to serve as Administrator of the estate, but no such Petition has been filed to date. Melody Russell has filed a declaration objecting to the appointment of Kimberly Harris as Administrator.

Related Case:

The Heather Gumina's mother is the personal representative of the Estate of Heather Gumina (PP20200053). She contends that the assets of the Estate of Heather Gumina will be whatever is received by means of enforcement of the \$1.3 million default judgment in the civil wrongful death judgment against Anthony Gumina, the sole heir of the estate of decedent.

TENTATIVE RULING #4:

- 1. Remove the current administrator, Anthony Gumina who cannot effectively carry out his duties while in prison, and for having been convicted for murder.**
- 2. Address the two pending Petitions for appointment - Russell must file a DE-147s, and may have to file a new POP. Set NLT date for Cordoba to object to Russell's Petition.**
- 3. Set the competing Petitions for hearing.**
- 4. What is the status of execution of the writ in the civil case?**

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5. ESTATE OF CAMPBELL 23PR0058

Letters Testamentary

Decedent died intestate on January 28, 2023, survived by the adult children of his pre-deceased siblings. The Will, dated January 19, 1994, was lodged with the court as an attachment to the Petition for probate on March 2, 2023. Petitioner is a beneficiary of the Will.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on March 2, 2023.

Proof of service of notice of the Petition was filed on May 10, 2023. Proof of publication was filed on May 18, 2023.

John Jewell, or Pulaski Bank and Trust are named as Executors in the Will. The Will waives bond for the named Executors, John Jewell, or Pulaski Bank and Trust.

John Jewell filed a declination to serve as Executor on July 5, 2023. A Declaration by Petitioner's counsel was filed on July 5, 2023, stating that the Pulaski Bank and Trust is no longer a going concern after it was acquired by First Busey Corporation in 2016.

There are bond waivers on file for all of the named beneficiaries of the Will.

This case appears to be identical to the Estate of Merry J. Campbell, 23PR0069, filed with this court on March 16, 2023. These cases should be consolidated.

TENTATIVE RULING #5:

- 1. Why is another Petition pending? See # 9 on the calendar today. Was the 3/16/23 Petition intended to supersede the 3/2/23 Petition? If so, DWOP the Petition filed 3/2/23.**
- 2. Absent Objection, approve if there is only one Petition for decision. Appoint Petitioner as Administrator with Will Annexed. Admit Will, Full IAEA. Bond waived by all named beneficiaries.**

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, IN DEPARTMENT NINE. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, JULY 29, 2024, IN DEPARTMENT NINE.

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6. ESTATE OF PAULSEN 23PR0103
Letters Testamentary

Decedent died testate on September 6, 2022, survived by his spouse, father and siblings. Petitioner is decedent's spouse.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on May 23, 2023.

Proof of service of Notice of the Petition was filed on May 25, 2023.

Proof of publication was filed on June 26, 2023.

The Petition references a Will dated February 28, 2017, which, according to the Petition, names Petitioner as Executor. There is no copy of the Will on file with the court.

The Petition requests bond be waived because all beneficiaries have executed bond waivers and because the Will does not require a bond, but only Petitioner has a bond waiver on file with the court, and there is no Will lodged with the court. Petitioner is not a resident of California. Absent the filing of bond waivers by the other individuals named in the petition as potential beneficiaries or evidence of waiver of a bond in the Will, the court is inclined to set bond based on the estimated value of the estate.

TENTATIVE RULING #6:

- 1. Set OSC for lodging of Will.**
- 2. Absent objection, approve the Petition, appointing Petitioner as Executor, Full IAEA. Bond will be required because Petition does not reside in CA, or Limited IAEA and no bond. Admit the Will.**

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, IN DEPARTMENT NINE. A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, JULY 29, 2024, IN DEPARTMENT NINE.

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7. IN THE MATTER OF JANE FLINT 23PR0096
Confirming Trust Assets

Petitioner is the acting successor trustee of the Burton A. Zabin and Henriette L. Zabin Revocable Trust, dated December 21, 2001 ("Trust"). At issue is this Petition is (1) real property located in Berkeley, California (the "Property"), which the settlors purchased on November 7, 1972 and took title as joint tenants, husband and wife (see Petition, Exhibit D), and (2) financial accounts that were titled in the individual name of Henriette Zabin. The Trust is being administered in El Dorado County.

The settlors never formally vested title to the Property in their Trust, but the Property is listed in Schedule A of the Trust by street address and APN number. Further, Article Seven, paragraph 3, Section 1 of the Trust specifically devises "that certain property which is our residence is located at 935 Shattuck Avenue, Berkeley, California 94708." Accordingly, Petitioner argues that it was the settlor's clear intention that the Property be included within the Trust's assets.

Schedule A of the Trust also lists "All banking, investment and brokerage accounts and safe deposit box contents" as part of the Trust estate. Petitioner requests the court to confirm that these assets are subject to the Trust and under the control of Petitioner as successor trustee. These accounts are listed in Exhibit E to the Petition, and Petitioner filed a supplemental Declaration on July 18, 2023, with proof of service to the other beneficiaries, attaching statements showing the current title to those accounts in the name of Henriette Zabin, "HL Zabin", "Burton A. Zabin & Henrietta Zabin" or "Henriette Lucille Zabin", and, where an address is listed on the statement, showing the mailing address at the Property.

Proof of service of notice of the hearing on the Petition was filed on July 18, 2023.

TENTATIVE RULING #7: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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**8. IN THE MATTER OF
LORAYNE M. CAMPBELL REVOCABLE TRUST 23PR0125**

Petition Confirming Trust Property – Instructing Trustees

This Petition concerns real property located in Strawberry, California that is held in the name of the settlor of the Lorayne M. Campbell Revocable Trust, which is being administered in El Dorado County. The Trust was created on June 21, 2006, and is attached to the Petition as Exhibit A. The Trust recites that “[t]he Settlor has transferred and delivered to the Trustee. . . the property described in the attached Schedule ‘A’ The Settlor desires that said property, . . . shall constitute the trust estate and shall be held, administered and distributed by the Trustee as provided herein.” Schedule A includes the referenced real property interest (“Strawberry Property”).

Settlor died on June 29, 2020, and at the time of her death the Strawberry Property was held in her name, notwithstanding her expressed intention to include it within the Trust assets. On June 21, 2006, the settlor signed a document titled “Assignment of Asset” purporting to convey title to the Strawberry Property to the Trust. See Petition Exhibit D. Petitioners believe that settlor was unaware that this document was not sufficient to convey title to the Trust.

Petitioners Gina Capella and Joseph Capella, as well as Julie Capella, the settlor’s three adult children, are co-trustees of the Trust. Petitioners desire to sell the Strawberry Property in accordance with the terms of the Trust. They have received an offer for the property, and have entered into a purchase and sale contract; however, a dispute has arisen among the three co-trustees.

Co-trustee Julie Capella has refused to participate in the sale of the Strawberry Property. Petitioners assert that sale of the property is necessary because:

- a) It is a specialized property interest on federal land subject to a special use permit that is so restricted as to prevent generating income from the property;
- b) It is the sole asset of the Trust and there are no Trust funds that can be used to maintain it;
- c) The current offer for purchase is for the full appraised value as established by the Probate Referee;
- d) The Trust calls for distribution of its assets to the beneficiaries and the beneficiaries of the Trust do not want to co-own the property with the other beneficiaries;
- e) Petitioners allege that liquidation of the property to distribute the cash from the sale would be in the best interests of the beneficiaries;
- f) The co-trustees are authorized to sell the property by the terms of the Trust;
- g) Two of the three co-trustees have voted in favor of the sale but the third co-trustee has not cooperated in the sale of the property.

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Petitioners request an Order of the court:

1. Confirming title of the Strawberry Property to be held by the Trust, subject to the terms of the Trust and under the control of the trustees of the Trust;
2. Confirming the sale of the Strawberry Property in accordance with the terms of the Residential Purchase Agreement attached to the Petition as Exhibit C, and instructing the co-trustees to execute the necessary documents to complete the transaction; and
3. Instructing the co-trustees to provide reimbursement from escrow proceeds to Gina Capella for the attorney fees (\$10,000) and costs (\$880) associated with bringing this Petition, and to reimburse Joseph Capella for administrative expenses (\$2,400) incurred in repairs to the Trust property, all of which were advanced from personal funds.

Notice of the Petition was filed in compliance with Probate Code § 851.

Probate Code § 850 permits a trustee who has a claim to property, the title to or possession of which is held by another, to file a petition requesting that the court make an order pursuant to Probate Code § 856 authorizing and directing the person having title to or possession of real property to execute a conveyance or transfer to a person entitled thereto, or granting other appropriate relief.

Probate Code § 17200 permits a trustee or beneficiary of a trust to petition the court concerning the internal affairs of the trust, including a petition for the court to instruct a trustee.

TENTATIVE RULING #8:

1. **Approve the Petition to Confirm the R/P as a Trust asset.**
2. **The court continued this matter to this date to see if the parties could agree on how the request to sell the R/P would be handled.**
3. **If no resolution, the court notes that the Response and Objection filed by Julie Capella on 7/18/23 seeks affirmative relief (injunctive relief for breach of fiduciary duty), which cannot be granted by way of an Objection.**

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, 2023, IN DEPARTMENT NINE.

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**9. IN THE MATTER OF MERRY J. CAMPBELL
Letters Testamentary**

23PR0069

See Tentative Ruling #5, Estate of Merry J. Campbell, 23PR0058. These cases should be consolidated.

TENTATIVE RULING #9:

- 1. See Calendar #5.**

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, 2023, IN DEPARTMENT NINE.

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10. IN THE MATTER OF RANDALL AESCHLIMAN 23PR0092
Petition to Set Aside Trust/First Amendment to Trust

Petition to Set Aside Trust/First Amendment to Trust

The Petition, filed on April 27, 2023, was filed by Petitioner Randall Aeschliman, son of decedent Dale Aeschliman with respect to the Dale Aeschliman Living Trust Agreement, dated September 30, 2020, amended on March 16, 2023 ("Trust"). Dale Aeschliman ("decedent") passed away on April 4, 2023 at the age of 93. Trustee Amber Peters is a professional fiduciary. Notice of the hearing on the Petition was filed on June 22, 2023.

The Petition alleges that the decedent was subject to undue influence by his paid caregiver when he executed the Trust and its amendment. The paid caregiver, Victoria Ramirez aka Taylor Northern, for consideration paid in cash by decedent, cared for decedent from 2020 until his death. Prior to this arrangement, Taylor Northern's mother, Shannon Vanogle, served as decedent's paid caregiver between 2019 and 2020.

The original Trust designated Shannon Vanogle as trustee, and Taylor Northern as successor trustee, and provided for the distribution of the entire estate first to Taylor Northern, and then to Shannon Vanogle, and should they not survive, to any living heirs as determined by laws of intestate succession, including decedent's two sons. The First Amendment to the Trust changed the trustee designation to Amber Peters, professional fiduciary. See Petition, Exhibit A. The Petition alleges that Petitioner believes that decedent executed the Trust and its First Amendment under the undue influence of Taylor Northern and her mother, Shannon Vanogle.

The Petition attaches as Exhibit D documentation of the February 4, 2020 felony conviction and sentencing of Taylor Northern following guilty pleas for violations of Penal Code 278 (child abduction).

The Petition alleges that Petitioner believes that decedent entered into a reverse mortgage with proceeds of approximately \$900,000, and that the proceeds cannot be located. See Exhibit E to Petition, Deed of Trust Securing a Reverse Mortgage Loan, dated July 22, 2022.

The Petition alleges that Petitioner believes that decedent was induced by undue influence to change the beneficiary designations on a Lincoln Financial Group account from Petitioner and his brother and instead designate Taylor Northern as beneficiary to the account. See Petition Exhibit F (beneficiary designation form dated August 25, 2015 listing Petitioner and his brother as beneficiaries).

The Petition also attaches as Exhibit G the Will of decedent, dated October 13, 1988, indicating his intention to leave his estate first to his wife, if she survive him, and then to his two sons in equal shares.

The Petition requests the court issue an Order:

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1. Setting aside the Trust and its First Amendment on the grounds of undue influence and/or lack of capacity;
2. Restraining the trustee or anyone acting in concert with her, during the pendency of this litigation, from spending, transferring and/or encumbering real or personal property, including balances held at any financial institutions;
3. Freezing all assets devolving from the Trust;
4. Compelling the trustee to grant Petitioner access to all real and personal property devolving from the Trust;
5. Awarding to Petitioner attorneys fees and costs of suit from the Trust.

Petition for Instructions

Given the Petition to Set Aside Trust/First Amendment to Trust detailed above, the trustee has filed a Petition requesting instructions from the court pursuant to Probate Code § 17200 as to 1) whether the trustee may use Trust assets to defend the Trust contest, and 2) seeking approval to delay distribution until the dispute is resolved.

The hearing on the Petition for Instructions is scheduled for August 28, 2023.

According to the Petition for Instructions, Randall Aeschliman initially objected to trustee's use of Trust funds to defend the validity of the Trust, but now agrees that the use of Trust funds for this purpose should be authorized. The Petition for Instructions alleges that there is good cause to instruct the trustee to disregard the requirement under Probate Code 16000 to administer the Trust in accordance with its terms, as well as the requirement of Article 5.2 of the Trust that directs the Trustee to distribute the Trust assets within six months of decedent's death, because of the contest and the dispute over entitlement to Trust assets.

The Petition requests that the court find that all notices have been given as required by law, and grant the Petition for Instructions to authorize the trustee:

1. To defend the Petition to Set Aside Trust/First Amendment to Trust at the expense of the Trust;
2. To delay distribution of Trust assets beyond the six-month period provided for in Article 5.2 of the Trust, and that trustee shall not distribute such assets absent agreement of the parties, court approval or a resolution of the Trust contest.

Trustee filed a proof of service of Notice of Hearing the Petition for Instructions on July 20, 2023, for the August 28, 2023, hearing on that Petition.

TENTATIVE RULING #10: THIS MATTER IS CONTINUED TO 8:30 A.M. ON MONDAY, AUGUST 28, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

**11. IN THE MATTER OF THE
JEAN M. TINDEL AND ANNE E. FINCK REVOCABLE TRUST 23PR0109**

Petition for Order to Terminate Trust

Paragraph Two.D.3(a) of the Eighth Amendment of the Jean M. Tindel and Anne E. Fink Revocable Trust, dated June 1, 2016, ("Trust") provided for distribution of Trust assets to a new "Trust for Lucas [Southerland] and his Children" ("Education Trust"). That distribution was to be retained in trust for the education of Lucas Southerland and his children. When the youngest beneficiary of the Education Trust reached the age of 25, any remaining assets were to be distribute to Lucas Southerland, the settlor's grandson. Petition, Exhibit A.

The verified Petition alleges that "circumstances not known to the settlor and not anticipated by the settlor" have occurred since her death, and pursuant to Probate Code § 15409(a), requests the court to terminate the Education Trust because continuing the Education Trust would "defeat or substantially impair the accomplishment of the purposes of the trust."

At the time of the surviving settlor's death in 2017, Elizabeth was, and continues to be, Lucas Southerland's only child. According to the Declaration of Jana Ellerman in support of the Petition, dated May 22, 2023, Jana Ellerman represented the settlors in their estate planning for 17 years prior to their deaths and continues to represent the trustee of their Trust, including preparation of the Eighth Amendment that is at issue. Exhibit 1 to that Declaration is declarant's contemporaneous note to file regarding the settlor's intentions in creating the Education Trust, indicating that the settlor wished to protect Trust asset from being accessed by Lucas Southerland's wife in an anticipated divorce proceeding, and to make sure that such assets were used for the education of Lucas Southerland's children.

The Petition alleges that the changed circumstances make it unnecessary to continue to hold the assets in Trust:

1. Because Lucas Southerland is a disabled veteran injured in combat duty, under the laws of North Carolina where he resides, Elizabeth is entitled to attend college in that state free of charge and any education that Lucas Southerland seeks to acquire would be paid through the GI Bill;
2. Lucas Southerland was divorced in June 2020 and there is no longer any mechanism for his ex-wife to access the Trust funds and/or to prevent them from being used for Elizabeth's education;
3. Access to the funds now, instead of 13 years from now when Elizabeth reaches the age of 25, would allow Lucas Southerland to improve his situation, such as allowing him to purchase a home.

The Petition requests an Order:

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1. Finding that all notices have been given by law;
2. Terminating the Education Trust established in Paragraph Two.D.3(a) of the Trust;
and
3. Authorizing funds remaining in the Education Trust be distributed outright to Lucas Southerland.

The Petition alleges that had the situation been known to the surviving settlor, she would have wanted to assist Lucas Southerland now, since funding of Elizabeth's education is already assured.

Proof of Service of Notice of hearing on the Petition was filed on June 15, 2023.

TENTATIVE RULING #11:

1. **Would this change impact the rights of any other beneficiaries?**
2. **How old is Elizabeth? If a minor, she needs independent counsel.**

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12. IN THE MATTER OF NANCY LORRAINE ESTRADA TRUST

23PR0099

Petition to Confirm Sale of Real Property

Pursuant to Probate Code § 3101(a), Petitioner requests the court to find that his spouse, Nancy Lorraine Estrada lacks the capacity to enter into certain transaction for which Petitioner requests the court's authorization and approval. Exhibit A to the Petition is a Capacity Declaration of Nancy Lorraine Estrada's physician dated May 2, 2023, indicating that due to major neurocognitive disorder (i.e. dementia) she lacks the capacity to give informed consent to any form of medical treatment, and lacks the capacity to effectively manage her property or financial affairs. The Declaration states: "Nancy is unable to manage daily activities and instrumental activities safely. She is unable to manage her finances and medications."

Petitioner seeks authorization from the court to convert their community assets to his separate property and to have Nancy Lorraine Estrada relinquish all interest in those properties. Petitioner is his spouse's primary caregiver, and he anticipates that she will require increasing levels of home care supervision for the rest of her life as her dementia progresses. Without the ability of his spouse to enter into financial and real property transactions with respect to their community property, Petitioner will not be able to access funding to provide for his spouse's increasing needs, including in home skilled nursing care. Petitioner alleges that he has reason to believe that his spouse would not oppose this Petition, and under the circumstances would take the requested actions herself if she had capacity to do so.

One of the proposed transactions is to make a gift of a cemetery plot that Nancy Lorraine Estrada inherited to her son.

Petitioner states that a bond should not be required because he has been managing the couple's properties up to now and will continue to do so to enable the proper care of himself and his wife.

Petitioner alleges that:

1. Petitioner has been married to Nancy Lorraine Estrada since 1999, and they reside at 5411 Milton Ranch Road in Shingle Springs;
2. No conservator has been appointed for Nancy Lorraine Estrada and she is not a patient in or on leave of absence from any institution under the jurisdiction of the Department of State Hospitals or the State Department of Developmental Services;
3. That both Petitioner and his spouse owned homes at the time of the marriage, and inherited real estate during the marriage, and that while titles to the properties remained in their separate names, the properties were rented and funds were

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commingled with community assets and used for various purposes. A list of real property interests owned by the parties, with a total estimated value of \$2,828,000 is attached to the Petition as Exhibit B.

4. Petitioner has the capacity to enter into transactions proposed by the Petition, but that Nancy Lorraine Estrada lacks such capacity.

Probate Code § 3101 provides:

(a) A proceeding may be brought under this chapter for a court order authorizing a proposed transaction, whether or not the proposed transaction is one that otherwise would require the joinder or consent of both spouses, if both of the following conditions are satisfied:

(1) One of the spouses is alleged to lack legal capacity for the proposed transaction, whether or not that spouse has a conservator.

(2) The other spouse either has legal capacity for the proposed transaction or has a conservator.

(b) A proceeding may be brought under this chapter for a court order declaring that one or both spouses has legal capacity for a proposed transaction.

(c) One proceeding may be brought under this chapter under both subdivision (a) and subdivision (b).

(d) In a proceeding under this chapter, the court may determine whether the property that is the subject of the proposed transaction is community property or the separate property of either spouse, but such determination shall not be made in the proceeding under this chapter if the court determines that the interest of justice requires that the determination be made in a civil action.

(e) This chapter is permissive and cumulative for the transactions to which it applies.

The verified Petition requests the court to make the following findings and Orders:

1. That Petitioner and Nancy Lorraine Estrada are husband and wife, all property described in Exhibit B to the Petition is community property, separate property with a community property component, or separate property where there is good cause for it to be included;
2. That Nancy Lorraine Estrada lacks legal capacity for the proposed transactions described and that she is substantially unable to manage her own financial resources or resist fraud or undue influence;
3. That Nancy Lorraine Estrada is neither a patient in nor on leave of absence from a state institution under the jurisdiction of the Department of State Hospitals or the State Department of Developmental Services;
4. That Petitioner has legal capacity for the proposed transaction;

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5. That Petitioner joins in and consents to the proposed transaction, and Nancy Lorraine Estrada is substantially unable to manage her own financial resources or resist fraud or undue influence;
6. That the proposed transactions are ones that are authorized under the laws governing proceedings for a particular transaction, commencing with probate Code § 3100, and a transaction that would be authorized under Article 10 ("substituted judgment", commencing with Probate Code § 2850) in the event of a conservatorship;
7. Authorizing Petitioner to execute deeds and transfer ownership to Petitioner of the community property of Petitioner and his spouse located at 5411 Milton Ranch Road, Single Springs, CA 95682 as his sole and separate property;
8. Authorizing Petitioner to execute deeds and transfer ownership to Petitioner of the separate property of Nancy Lorraine Estrada (1) located at 185 Talmadge Avenue, San Jose, CA 95127 and (2) located at 905 Sunrose Terrance #101, Sunnyvale, CA 94086, as his sole and separate property;
9. Authorizing Petitioner to execute deeds and other necessary documents to transfer ownership to Nancy Lorraine Estrada's son Brian Matthew Lopez of a cemetery plot located at Oak Hill Memorial Park, Graves 3 Lot 1118 Parkview Lawn;
10. Dispensing with the requirement that Nancy Lorraine Estrada personally attend the hearing on this Petition.
11. Dispensing with the requirement of a bond.

Proof of service of Notice of hearing on the Petition was filed on June 20, 2023.

TENTATIVE RULING #12:

- 1. What happens if this Petition were to be approved, all of the community property became the Petitioner's separate property, and the Petitioner died? Where would that leave Nancy?**
- 2. If approved, a bond will be required.**
- 3. Who are Nancy's heirs? Were they given notice? If not listed in the Notice filed 6/20/23, Petitioner must file a Supplement identifying them as her heirs, and give new notice.**

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

13. IN THE MATTER OF THE FELIX ROBERT THAYER UTMA ACCOUNT 23PR0123

Petition to Designate Successor Custodian

Petitioner is the grandmother of the minor beneficiary of a Uniform Transfers to Minor's Act account, and the spouse of the former custodian of the account. The former custodian died without designating a successor custodian. The minor beneficiary has no conservator. The financial institution that holds the account requires a court order to designate a successor custodian, which is authorized by the California Uniform Transfers to Minor's Act, Probate Code §§ 3900 *et seq.*, and specifically by Probate Code § 3918(d) and 3918(h).

Probate Code § 3918(d) provides:

If the transferor has not effectively designated a successor custodian, and a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subdivision (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian. (Emphasis added.)

The minor beneficiary is ten years old, and cannot designate a successor custodian himself.

Probate Code § 3918(h) provides:

Upon consideration of the petition under subdivision (d) or (f), the court may grant the relief that the court finds to be in the best interests of the minor.

Proof of service of Notice of hearing on the Petition was filed on June 28, 2023.

TENTATIVE RULING #13: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

14. ESTATE OF REUBEN CARVER III 22PR0053

Petition for Final Distribution on Waiver of Account

Letters Testamentary were issued on July 20, 2022.

A Final Inventory and Appraisal was filed on January 10, 2023.

Waivers of Account were executed by both heirs entitled to distributions under the estate, and such waivers are attached to the Petition as Exhibit D.

Notice of hearing on the Petition was filed on July 6, 2023.

The proposed distribution of the estate is for equal shares to be distributed to each of the two heirs.

The verified Petition requests:

1. The administration of the estate be brought to a close without the requirement of an accounting;
2. All acts and proceedings of the Personal Representative be confirmed and approved;
3. All creditor claims not properly filed with the court and served on the estate be barred;
4. The Personal Representative be authorized to pay statutory attorney fees in the amount of \$13,146.00;
5. Approval of distribution of the estate to the persons entitled to it as specified in the Petition for Final Distribution;
6. The residual property of the estate together with any other property of the decedent not now known or later discovered be distributed as set forth in the Petition.

TENTATIVE RULING #14: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

15. ESTATE OF AMERAL 23PR0128

Petition for Letters Testamentary

Decedent died testate on May 17, 2023, survived by two adult children. Petitioner is decedent's son.

The Will, dated April 27, 2023, was lodged with the court on June 14, 2023.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on June 14, 2023

Proof of service of Notice of the Petition was filed on June 22, 2023.

Proof of publication was filed on July 18, 2023.

Petitioner is named as Executor in the Will.

Proof of service of notice of the hearing on the Petition was filed with the court on June 22, 2023.

The Petition requests that bond be waived on the basis of a bond having been waived in the Will; however the court has not located such a waiver in the Will Lodged 6/14/23. That being the case a bond will be required.

TENTATIVE RULING #15:

1. Approve the Petition, appointing Petitioner as Executor with Full IAEA authority, admit the Will. Bond of \$266,000.

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, JULY 31, 2023, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET AT 8:30 A.M. ON MONDAY, JULY 29, 2024, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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16. THE O. EUGENE HICKMAN TRUST AGREEMENT, DATED MAY 25, 1993 23PR0131

Petition to Expunge Lis Pendens -Attorney's Fees

On July 7, 2023, the subject Petition was granted and the court took the issue of attorneys fees under submission.

TENTATIVE RULING #16: THIS MATTER IS CONTINUED TO 8:30 A.M. ON MONDAY, AUGUST 28, 2023, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.